

December 10, 2007

Mr. Santiago A. Canton, Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street, N.W.
Washington, D.C. 20006

Re: Request for hearing regarding violations of human and labor rights of public sector workers in North Carolina by the United States government and the government of North Carolina

Dear Mr. Canton:

The undersigned national, international, regional, and North Carolina organizations submit this request for a thematic hearing during the 131st session of the Inter-American Commission on Human Rights (“Honorable Commission” herein) to present the Honorable Commission with information about the denial of basic human rights and labor rights to public sector workers in the state of North Carolina by the governments of the United States and North Carolina.

The United States does not include the protection of collective labor rights of state and municipal workers in either its national constitution or its federal labor law, generally leaving to the states the regulation of collective bargaining for public workers. The result is that individual states established a wide variety of systems, ranging from broad protection for public workers in the historically industrialized and unionized northern part of the country and more limited protections in the South. While the levels of regulation may vary from state to state, only North Carolina and Virginia affirmatively prohibit public sector workers from entering into collective bargaining agreements.¹ At present, some 650,000 public employees are denied the right to collective bargaining by the state of North Carolina. North Carolina General Statute § 95-98

¹ At present, some twenty-seven states and the District of Columbia have comprehensive statutes providing collective bargaining rights for public employees at the state and local level. Massachusetts, New Hampshire, Maine, Connecticut, Michigan, Iowa, New Jersey, Montana, and many other states have comprehensive public employee collective bargaining statutes, but prohibit public employees from striking. A few states with comprehensive public employee bargaining statutes, such as Ohio and Oregon, authorize strikes by most public employees as well, but only after mediation and/or fact-finding has taken place. Ohio Rev. Code Ann. §§ 4117.01-4117.23; O.R.S. § 243.650 et sec. Another thirteen states have collective bargaining statutes which cover only certain groups of employees. For example, Nevada permits collective bargaining for school districts and other local government employees; Tennessee permits collective bargaining for teachers; Wyoming’s collective bargaining statute only covers fire fighters. Nev. Rev. Stat. Ann. §§ 288.010-288.280; Tenn. Code Ann. §§ 49-5-601 to 49-5-613; Wyo. Stat. Ann §§ 27-10-101 to 27-10-109. Alabama permits state and municipal fire fighters to meet and confer with their public employer and execute memoranda expressing the intentions of the parties, but no labor contract can be binding on the employer. Ala. Code 1975 § 11-43-143. Some eight states such as West Virginia and Colorado have no collective bargaining statutes at all – which results in state workers effectively having no right to collective bargaining. Many of these states permit municipal employees to bargain under local ordinances. While a number of states place limitations on public employees’ bargaining rights, only North Carolina and Virginia prohibit collective bargaining by all state and local public employees. N.C. Gen. Stat. § 95-98.; Va. Ann. Code § 40.1-57.2.

("NCGS § 95-98" herein) declares such public sector collective bargaining agreements "to be against public policy of the State, illegal, unlawful, void and of no effect."² Despite challenges to the constitutionality of NCGS § 95-98, U.S. federal courts have found the North Carolina statute lawful and not in violation of the rights of freedom of association guaranteed by the First Amendment to the U.S. Constitution.³ As a result, public sector workers in North Carolina are subjected to unconscionable working conditions, low wages and benefits, unreasonable and unsafe hours of work, extreme under-staffing, unreasonable forced overtime, changing rules, favoritism and disrespectful treatment from superiors, and other intolerable conditions without recourse to the protections collective bargaining affords.

Collective Bargaining is a Fundamental Human Right

Freedom of association and the right to bargain collectively are fundamental principles of the Organization of American States ("OAS"), embodied in the OAS Charter, the American Declaration of the Rights of Duties of Man, the Inter-American Democratic Charter, the American Convention on Human Rights, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

The United States is bound by Article 45 of the OAS Charter, which provides:⁴

The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:

- a) *All human beings, without distinction as to race, sex, nationality, creed or social condition, have the right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security;*

² "Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect." N. C. Gen. Stat. § 95-98.

³ *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C. 1969); *Winston-Salem/Forsyth County Unit, North Carolina Association of Educators v. Phillips*, 381 F. Supp. 644 (M.D.N.C. 1974). See also, *Smith v. Arkansas State Highway Emp. Local 1315*, 441 U.S. 463 (1979) (First Amendment does not impose affirmative obligation on government to listen to, respond to, recognize or bargain with an employee association).

⁴ The Charter has been amended several times since it was adopted in 1948, including by the Protocol of Buenos Aires, signed on February 27 1967, at the Third Inter-American Conference and ratified by the United States on April 23, 1968. The Protocol includes the above-quoted language in Article 45.

- c) *Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws.*

Article XXII of the American Declaration also guarantees every person the “right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.”⁵ & ⁶ While North Carolina no longer technically prohibits state and municipal employees from organizing or joining a union, the prohibition on public sector bargaining renders hollow any true notion of freedom of association.⁷ As the ILO recognized in condemning NCGS § 95-98, the right to form or join a union is devoid of substance without the right of workers to use their collective strength to achieve a collective bargaining agreement – the intended benefit of their association.⁸

Further, Article 10 of the Inter-American Democratic Charter, which the United States enthusiastically endorsed in 2001, provides that

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental

⁵ Although the American Declaration is not a legally binding treaty, both the Inter-American Court and the Inter-American Commission have held that the Declaration is a source of international obligations for the OAS member countries.

⁶ Also relevant are Article 16 of the American Convention on Human Rights, which the United States has signed but not ratified, and the Articles 2, 7 and 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, which the United States has neither signed nor ratified.

⁷ North Carolina prohibited public employees from even joining a union until the law was struck down in *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C. 1969).

⁸ 344th Report of the Committee on Freedom of Association, ¶¶ 991, 995.

ILO conventions.⁹ Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

As a signatory to the Inter-America Democratic Charter, the United States recognizes that a strong democracy requires the ability of workers to fully exercise their fundamental rights, including the right to freely associate and to bargain collectively, as laid out in ILO Conventions 87 (Freedom of Association and Protection of the Right to Organize) and 98 (Right to Organize and Collective Bargaining). On its face, NCGS § 95-98 violates ILO Convention 98 and by extension violates ILO convention 87. As such, the US is not living up to its obligations under the Inter-American Democratic Charter. While the United States claims to support the promotion of democracy in the Americas, it refuses to apply to its own actions the human rights standards which would permit the spread of democracy, including labor rights for state and municipal workers.

The ILO Has Ruled that North Carolina General Statute § 95-98 Violates International Human and Labor Rights

The United States has long been aware that the prohibition of collective bargaining in North Carolina violates international labor standards, yet has never passed federal legislation or done anything else to remedy the situation. Over a decade ago, the International Labor Organization (ILO) Committee on Freedom of Association denounced North Carolina General Statute § 95-98 in Case 1557.¹⁰

In December 2005, the United Electrical, Radio and Machine Workers of America (UE), a union representing state and municipal employees in North Carolina, filed a complaint against the United States government and the state of North Carolina with the Committee on Freedom of Association of the ILO. (See Case No. 2460). The complaint was supported by Public Services International (PSI). After months of delay, the United States responded to the complaint.

On March 16, 2007, the Committee on Freedom of Association issued strongly worded recommendations which were approved by the ILO Governing Body at its 298th Session.¹¹ The

⁹ The 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work commits member states to respect and promote the following principles and rights, whether or not they have ratified the relevant Conventions: freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labor; the abolition of child labor; and the elimination of discrimination in respect to employment and occupation.

¹⁰ ILO, Committee on Freedom of Association, Report 284, Case 1557, paragraph 813, and Report 291, Case 1557, paragraph 285.

¹¹ ILO, Committee on Freedom of Association, Report 340, Case 2460, paragraph 5; and Report 342, paragraph 6; ILO Committee on Freedom of Association, Report 344, paragraphs 940-999 (March 2007). The ILO decision is appended in English and in Spanish.

ILO rejected virtually all of the United States government's arguments, emphasizing that "provisions which ban trade unions from engaging in collective bargaining unavoidably frustrate the main objective and activity for which such unions are set up," and violate Conventions 98 (Right to Organize and Collective Bargaining) and 87 (Freedom of Association and Protection of the Right to Organize). (344th Report of the Committee on Freedom of Association, ¶ 991). The Committee concluded that North Carolina law is not in conformity with principles of freedom of association and called for the repeal of North Carolina General Statute § 95-98 and the establishment of a legitimate collective bargaining framework in North Carolina with the participation of representatives of the state and local administration and public employees' trade unions. (344th Report of the Committee on Freedom of Association, ¶¶ 995, 999). The United States government has done nothing to implement the Committee's recommendations to date.¹²

The ICLR Found A Correlation Between the Lack of Collective Bargaining Rights and Widespread Violations of Workers Rights

In the Autumn of 2005, the International Commission on Labor Rights (ICLR) sent a delegation of labor and human rights experts from around the world to North Carolina to investigate the impact of the state's prohibition of public sector collective bargaining on the working conditions of state and municipal workers. After a thorough investigation, the ICLR delegation found "significant violations of internationally recognized labor standards in the public sector in North Carolina, which were strongly correlated to the absence of collective bargaining rights." (ICLR report, issued June 14, 2006, at page 4). Specifically, the ICLR found that public sector workers in North Carolina are subjected to unconscionable working conditions, low wages and benefits, unreasonable and unsafe hours of work, extreme under-staffing, unreasonable forced overtime, changing rules, racial and gender discrimination, favoritism, and disrespectful treatment from superiors without recourse to the protections of a collective bargaining agreement. (ICLR report at pages 4-5). The ICLR recommended that the U.S. federal government immediately ratify the ILO Conventions protecting freedom of association and collective bargaining, that the state of North Carolina repeal North Carolina General Statute § 95-98, and that the state's subdivisions institute "meet and confer" measures in the interim which would promote negotiations with workers' organizations, even if the outcome of such negotiations are not enforceable. (ICLR Report at 5). A bill to repeal NCGS § 95-98 was introduced in the North Carolina legislature this year.

¹² In October 2006, the Frente Auténtico del Trabajo (FAT) and the UE filed a submission with the Mexican Administrative Office (NAO) under the North American Labor Agreement on Labor Cooperation (NAALC), charging the United States with failure to maintain "high labor standards" for public sector workers in North Carolina, as required by the agreement, and failure to adequately enforce its obligations under international law. The submission was supported by 53 labor organizations, including labor organizations from all three NAFTA countries and two worldwide labor federations (PSI and ICEM). The Mexican NAO recently accepted the submission, sending a six-page query to its counterpart in the United States regarding North Carolina General Statute § 95-98, and asking for a progress report on what the governments of the United States and North Carolina have done in respect to the ILO's recommendations.

A Hearing Before the IACHR Will Focus Attention on Continued Violations of International Human and Labor Rights by the United States Regarding Public Employees

Despite the recommendations and findings of the ILO and the ICLR, the North Carolina legislature has refused to repeal NCGS § 95-98. Likewise, the United States has taken no actions to pressure North Carolina to repeal this statute and has established no national standards for state laws and regulations governing collective bargaining for state and local public employees. A thematic hearing before the IACHR would continue to focus much needed attention on the violations of internationally recognized labor rights by the State of North Carolina and the United States.

Participants in the hearing will examine the abuses of workers' rights by North Carolina municipal and state authorities because of the lack of collective bargaining rights, within the context of the fundamental human rights standards outlined above. The participants in the hearing also will be able to provide the Commission with documentary evidence and direct testimony on the impact of the lack of collective bargaining on the lives of municipal and state workers in North Carolina. Participants will include municipal and state workers, and leaders of human rights and academic institutions involved with North Carolina public employees.

Participants may include:

Lance Compa, Senior Lecturer
Cornell University, School of Industrial and Labor Relations

Reverend Nelson Johnson
Faith, Labor and Community Alliance

Angaza Laughinghouse, President
UE Local 150, North Carolina Public Service Workers Union

David Zonderman, Associate Professor
North Carolina State University
HOPE Coalition

Several municipal and state employees

Additionally, we respectfully ask the Honorable Commission to allow the hearing to be public and to request the participation of the United States government as well as state and municipal authorities in North Carolina. We thank the Honorable Commission in advance of its prompt attention to this matter. Please do not hesitate to contact Polly Halfkenny, General Counsel, United Electrical, Radio and Machine Workers of America (UE), One Gateway Center, Suite 1400, Pittsburgh, PA, (412) 471-8919, E-mail <polly.halfkenny@ranknfile-ue.org>, for more information.

Very truly yours,

National and International Organizations

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- American Friends Service Committee (AFSC)
- American Rights at Work
- Campaign for Labor Rights
- Center for Constitutional Rights
- Center for Economic and Social Rights
- Farm Labor Organizing Committee (FLOC), AFL-CIO
- Global Exchange
- Global Rights
- Grassroots Global Justice (GGJ)
- Institute for Policy Studies, Global Economy Project
- Interfaith Worker Justice
- International Association of Fire Fighters
- International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM)
- International Labor Rights Fund
- International Longshore & Warehouse Union
- Jobs with Justice
- Lawyers Committee for Civil Rights Under the Law
- National Economic and Social Rights Initiative (NESRI)
- National Employment Law Project
- National Immigration Law Center
- National Lawyers Guild
- Public Services International (PSI)
- Robert F. Kennedy Memorial Center for Human Rights
- Service Employees International Union (SEIU)
- Southern Poverty Law Center
- United Electrical, Radio and Machine Workers of America (UE)
- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (USW), AFL-CIO
- US Human Rights Network

North Carolina and Southern Regional Organizations

- African American/Latino Alliance
- Black Workers for Justice
- Coalition Against Racism
- College Democrats at NC State University
- Hear Our Public Employees (HOPE) Coalition¹³

¹³ HOPE Coalition voting members are: North Carolina State AFL-CIO; American Federation of Teachers, North Carolina; North Carolina Association of City and County Employees; Professional Fire Fighters and Paramedics of North Carolina; State Employees

- International Longshoremen's Association Local 1422
- Law Firm of Edelstein & Payne
- North Carolina AFL-CIO
- North Carolina Council of Churches
- North Carolina Environmental Justice Network
- North Carolina Justice Center
- North Carolina National Lawyers Guild
- North Carolina State Conference of the National Association for the Advancement of Colored People (NAACP)
- Professional Firefighters & Paramedics of North Carolina
- Project South: Institute for the Elimination of Poverty & Genocide
- Southern Alliance for Collective Bargaining
- Southern Anti-Racism Network
- Southern Faith Labor Community Alliance
- Students for a Democratic Society (UNC- Chapel Hill)
- Students United for a Responsible Global Environment (Chapel Hill)
- Student Worker Alliance (NC State University)
- UE Local 150, North Carolina Public Service Workers Union
- UE Local 160, Virginia Public Service Workers Union
- UE Local 170, West Virginia Public Workers Union
- University Graduate Student Association (NC State University)

Enclosures: ILO decision
ICLR Report
NAALC Submission

Association of North Carolina (SENAC); Teamsters Local 391; UE Local 150, North Carolina Public Service Workers Union.